

AMENDED IN ASSEMBLY MAY 7, 2014

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2494

Introduced by Assembly Member Cooley

February 21, 2014

An act to ~~amend~~ *amend, repeal, and add* Section 128.5 of the Code of Civil Procedure, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2494, as amended, Cooley. Courts: frivolous actions or proceedings.

Existing law authorizes a trial court to order a party, the party's attorney, or both to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994. ~~Existing law defines "frivolous" for these purposes, in part, as "for the sole purpose of harassing an opposing party."~~ In addition to the reasonable expenses award, existing law authorizes the court to assess punitive damages against the plaintiff on a determination that the plaintiff's action was maintained by a person convicted of a felony against the person's victim for injuries arising from the acts for which the person was convicted, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

Existing law also requires every pleading, petition, written notice of motion, or other similar paper to be signed by the attorney of record, or if a party is unrepresented, by the party, thereby certifying to the best

of the person's knowledge, information, and belief that it is not being presented primarily for an improper purpose, as specified, and that the claims, defenses, and legal and factual contentions are warranted, as specified. Existing law authorizes a trial court to impose sanctions upon an attorney, law firm, or party that violates these provisions in a complaint, petition, or other paper filed on or after January 1, 1995.

This bill would delete the December 31, 1994, date limitation on a trial court's authorization to award reasonable expenses incurred as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, thus making both of the provisions described above applicable commencing January 1, 2015. *The bill would include in the definition of "actions or tactics" the filing and serving of an answer or other responsive pleading, and would exclude from that definition disclosures and discovery requests, responses, objections, and motions. The bill would require certain standards, conditions, and procedures to apply to sanctions imposed pursuant to its provisions. The bill would repeal these provisions on January 1, 2018.*

The bill would also require the Judicial Council, on or before June 30, 2018, to submit a report to the Legislature examining the impact and effect of this act, including the number of specified motions made, the number of those motions resulting in an award of sanctions, the nature and amount of any sanctions awarded, and whether or not this act has had a demonstrable effect on reducing the frequency and severity of bad faith actions or tactics that would not be subject to sanction under existing law.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 128.5 of the Code of Civil Procedure is
- 2 amended to read:
- 3 128.5. (a) A trial court may order a party, the party's attorney,
- 4 or both to pay the reasonable expenses, including attorney's fees,
- 5 incurred by another party as a result of bad-faith actions or tactics
- 6 that are frivolous or solely intended to cause unnecessary delay.
- 7 This section also applies to judicial arbitration proceedings under
- 8 Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part
- 9 3.
- 10 (b) For purposes of this section:

(1) “Actions or tactics” include, but are not limited to, the making or opposing of motions or the filing and service of a ~~complaint or cross-complaint~~ *complaint, cross-complaint, answer, or other responsive pleading*. The mere filing of a complaint without service thereof on an opposing party does not constitute “actions or tactics” for purposes of this section.

(2) “Frivolous” means totally and completely without merit or for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party’s moving or responding papers or, on the court’s own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff on a determination by the court that the plaintiff’s action was an action maintained by a person convicted of a felony against the person’s victim, or the victim’s heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(f) Any sanctions imposed pursuant to this section shall be imposed consistently with the standards, conditions, and procedures set forth in subdivisions (c), (d), and (h) of Section 128.7.

~~(e)~~

(g) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

(h) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 2. Section 128.5 is added to the Code of Civil Procedure, to read:

128.5. (a) A trial court may order a party, the party’s attorney, or both to pay any reasonable expenses, including attorney’s fees, incurred by another party as a result of bad-faith actions or tactics

1 *that are frivolous or solely intended to cause unnecessary delay.*
2 *This section also applies to judicial arbitration proceedings under*
3 *Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part*
4 *3.*

5 *(b) For purposes of this section:*

6 *(1) "Actions or tactics" include, but are not limited to, the*
7 *making or opposing of motions or the filing and service of a*
8 *complaint or cross-complaint only if the actions or tactics arise*
9 *from a complaint filed, or a proceeding initiated, on or before*
10 *December 31, 1994. The mere filing of a complaint without service*
11 *thereof on an opposing party does not constitute "actions or*
12 *tactics" for purposes of this section.*

13 *(2) "Frivolous" means totally and completely without merit or*
14 *for the sole purpose of harassing an opposing party.*

15 *(c) Expenses pursuant to this section shall not be imposed except*
16 *on notice contained in a party's moving or responding papers, or*
17 *the court's own motion, after notice and opportunity to be heard.*
18 *An order imposing expenses shall be in writing and shall recite in*
19 *detail the conduct or circumstances justifying the order.*

20 *(d) In addition to any award pursuant to this section for conduct*
21 *described in subdivision (a), the court may assess punitive damages*
22 *against the plaintiff upon a determination by the court that the*
23 *plaintiff's action was an action maintained by a person convicted*
24 *of a felony against the person's victim, or the victim's heirs,*
25 *relatives, estate, or personal representative, for injuries arising*
26 *from the acts for which the person was convicted of a felony, and*
27 *that the plaintiff is guilty of fraud, oppression, or malice in*
28 *maintaining the action.*

29 *(e) The liability imposed by this section is in addition to any*
30 *other liability imposed by law for acts or omissions within the*
31 *purview of this section.*

32 *(f) This section shall become operative on January 1, 2018.*

33 *SEC. 3. On or before June 30, 2018, the Judicial Council shall*
34 *submit a report to the Legislature examining the impact and effect*
35 *of this act, including the number of motions made under both*
36 *Sections 128.5 and 128.7 of the Code of Civil Procedure, the*
37 *number of motions made pursuant to those sections resulting in*
38 *an award of sanctions, the nature and amount of any sanctions*
39 *awarded pursuant to those sections, and whether or not the*
40 *enactment of Section 128.5 of the Code of Civil Procedure in this*

- 1 *act has had a demonstrable effect on reducing the frequency and*
- 2 *severity of bad faith actions or tactics that would not be subject*
- 3 *to sanction under Section 128.7 of the Code of Civil Procedure.*

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